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BY ECF and Facsimile

Honorable Andrew J. Peck

United States Magistrate Judge

Daniel Patrick Moynihan

United States Courthouse

500 Pearl Street, Room 20D

New York, New York 10007-1312

Re: *Senisi v. John Wiley & Sons, Inc.*, No. 13-cv-3314 (LTS)(AJP)
Dwight v. John Wiley & Sons, Inc., No. 14-cv-6742 (VSB)(AJP)
Gibson v. John Wiley & Sons, Inc., No. 14-cv-6743 (VSB)(AJP)
Psihoyos v. John Wiley & Sons, Inc., No. 14-cv-6744 (VSB)(AJP)
Wells v. John Wiley & Sons, Inc., No. 14-cv-6745 (AT)(AJP)
Wu v. John Wiley & Sons, Inc., No. 14-cv-6746 (AKH)(AJP)

Dear Magistrate Judge Peck,

We write on behalf of Defendant John Wiley & Sons ("Wiley") in connection with the above-captioned cases to supplement the submission by Plaintiffs' counsel to the Court today.

At the parties' January 15, 2015 conference, Plaintiffs' counsel was instructed to serve the 30(b)(6) deposition notices so that the parties could work on a schedule for the depositions and update the court by close of business today. *See* January 15, 2015 Tr. at 6:24-12:12. Counsel for Plaintiffs represented that notices were ready, and that he would serve them that same day -- Thursday, January 15. *Id.* at 8:3-7; 9:13-16. Instead, counsel did not serve the 30(b)(6) notices until 9:38 pm last Friday January 16, well after business hours, and several hours into the Martin Luther King Holiday weekend when Wiley's offices were closed, leaving only today to try and coordinate all of the witnesses. As a result, Wiley has not yet confirmed a schedule in time for this filing. However, Wiley can confirm that its 30(b)(6) witnesses will be consolidated across the six cases, reducing the total number of necessary depositions, and has already confirmed dates for one witness within the timeframe set forth in the notices. We will work with Plaintiffs' counsel to set a schedule for all witnesses as soon as practicably possible, subject to Wiley's objections to the 30(b)(6) notices.

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Many of the topics identified in the 30(b)(6) notices are overly broad and plainly outside the scope of discovery in these matters. For example, despite the Court's orders that limited discovery to the photographs pled in the complaint (an order affirmed by Judges Swain and Hellerstein), as used in the publications pled in the complaint, Plaintiffs purported to notice numerous deposition topics regarding additional photographs and additional publications. Moreover, the notices include many of the identical 30(b)(6) topics on which Plaintiffs' counsel sought deposition testimony on in another case against Wiley, to which Wiley objected and obtained a protective order by Magistrate Judge Dolinger, substantially limiting the scope of the 30(b)(6) depositions. *Warren/Young-Wolff v. John Wiley & Sons, Inc.*, 12 Civ. 5230 (JPO) (MHD) Dkt. 68 (June 19, 2014).

While Judge Dolinger's decision is not binding in these cases, it is noteworthy that after failing to serve the deposition notices for the many months that these matters have been pending, Plaintiffs waited until just nine business days prior to the close of discovery to designate topics that they knew Wiley objected to and which could have and should have been served long ago. Nothing in the notices served by Plaintiffs is tied to or based on documents Wiley has produced in these cases. Plaintiffs' inexplicable delay in serving these pro-forma requests, coupled with Plaintiffs' counsel's continued pursuit of testimony on irrelevant and undiscoverable topics, shows a lack of good faith in conducting discovery and unfairly puts Wiley and the Court in the position of having to spend time narrowing requests that Plaintiffs' counsel knows are improper.

Nevertheless, we notified Plaintiffs' counsel over the weekend of Wiley's objections to many of the topics in the notices, have resolved some of those objections, and are working to come to a resolution. The parties have agreed to continue scheduling witnesses, subject to Wiley's objections to the deposition topics. Wiley expects to identify any outstanding issues regarding the topics identified in Plaintiffs' notices in the submission to the Court due this Thursday, January 22, 2015, in anticipation of the parties' January 26, 2015 conference.

Respectfully submitted,



Toby Butterfield

cc: Kevin McCulloch, Esq. (via email)
Danial Nelson, Esq. (via email)
Robert Penchina, Esq. (via email)
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